

Sheehan & Associates, P.C.
spencer@spencersheehan.com

505 Northern Blvd Ste 311, Great Neck NY 11021-5101
tel. 516.303.0552 fax 516.234.7800

April 21, 2020

District Judge Kenneth M. Karas
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Re: 7:19-cv-10860-KMK
Richardson v. Mars, Incorporated

Dear District Judge Karas:

This office, with co-counsel Michael Reese, Reese LLP, represents the plaintiff. On Tuesday, April 14, 2020, defendant served and filed a letter seeking a pre-motion conference to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6). In accordance with your Honor's Individual Rules of Practice in Civil Cases ("Individual Rules"), plaintiff is required to serve and file a letter response within seven days.

Consistent with the rules and practices of the Court, which typically consider service of a defendant's pre-motion letter timely service under Rule 12 if served within the time required by the Rule, plaintiff will "amend its pleading once as a matter of course" within 21 days "after service of [defendant's] motion under Rule 12(b)." Fed. R. Civ. P. 15(a)(1)(B); *Solis v. McAleenan*, No. 19-cv-5383 (S.D.N.Y. Dec. 5, 2019) ("Under Rule 15(a)(1)(B), a plaintiff has 21 days after the service of a motion under Rule 12(b) to amend the complaint once as a matter of course."); *Martinez v. LVNV Funding, LLC*, No. 14-cv-00677, 2016 WL 5719718, at *3 (E.D.N.Y. Sept. 30, 2016); *M.E.S., Inc. v. Liberty Mut. Sur. Group.*, No. 10-cv-0798, 2014 WL 46622 (E.D.N.Y. Jan. 6, 2014), *2 (noting that a plaintiff's amendment as of right in response to defendant's pre-motion letter seeking dismissal "allow[s] for the more efficient use of the Court's time and resources because the Court need only meet with the Parties once...and the need for the motion may be obviated if the amended pleading deals with Defendants' concerns."). Among other items, plaintiff will add the party identified by defendant in its letter and remove the present party defendant.

Plaintiff will file an amended complaint on or before Tuesday, May 5, 2020, 21 days after defendant's letter-motion was served. Fed. R. Civ. P. 6(a)(1)(A) (excluding "the day of the event that triggers the period"); 6(a)(1)(C) (where the last day of the period is "a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday."); Fed. R. Civ. P. 15(a)(1)(B). Thank you.

Respectfully submitted,

/s/Spencer Sheehan
Spencer Sheehan

Certificate of Service

I certify that on April 21, 2020, I served and/or transmitted the foregoing by the method below to the persons or entities indicated, at their last known address of record (blank where not applicable).

	CM/ECF	First-Class Mail	Email	Fax
Defendant's Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plaintiff's Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtesy Copy to Court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

/s/ Spencer Sheehan